

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE
THE MISSISSIPPI EMERGENCY MANAGEMENT**

WHEREAS, the Federal Emergency Management Agency (FEMA), which has been incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, makes assistance available to States, communities, and other eligible entities through its Programs for disaster housing; hazard mitigation; prevention of, and preparedness for, emergencies and disasters; and the repair, restoration and replacement of public infrastructure pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206, (Stafford Act), the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001 et seq., the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2201 et seq., and implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR); and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may affect properties listed in, or eligible for, the *National Register of Historic Places* (historic properties), and FEMA has consulted with the Mississippi State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, FEMA has invited the Advisory Council on Historic Preservation (Council) to enter into formal consultation and become a signatory party to this document, thus affording the Council a reasonable opportunity to comment on all FEMA Programs identified in the Preamble, pursuant to 36 CFR Part 800, implementing Sections 106, and the Council has declined to formally consult or to become a signatory party, pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, as a result of future disasters and/or enabling legislation, the State of Mississippi will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible applicants to alleviate the effects of future disaster related damages through FEMA's various grant Programs, and as such the Mississippi Emergency Management Agency (MEMA) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, the SHPO, and MEMA acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR 800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of Undertakings on historic properties may be considered while delays to FEMA's delivery of disaster assistance are minimized; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on historic properties that have religious and cultural significance to Federally recognized tribes (Tribes), and FEMA may request that these Tribes participate in the terms of this Agreement to fulfill the requirements of Section 106;

NOW, THEREFORE, FEMA, the SHPO, and MEMA agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO and MEMA, FEMA shall require that the following measures are implemented:

I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded by the Programs.
- B. If a project has been previously reviewed and approved under Section 106 in another Federal program or by another Federal agency, no further review is required, as long as the project is the same one that was reviewed under the other program. The applicant and/or MEMA shall certify to FEMA that a project has not changed (i.e., that the project plans bear the same date as those referenced in the previous comment letter) when submitting a previous comment letter for compliance with Section 106.
- C. FEMA may request that a Tribe become a signatory to this Agreement by entering into an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of a Tribe without further change to this Agreement will not require an amendment to the Agreement. A sample Tribal Addendum is attached as Appendix A.

II. APPLICABILITY

- A. This Agreement applies immediately upon date of execution and will remain in effect for five (5) years.
- B. FEMA will determine when an Undertaking meets applicable criteria of the Programmatic Allowances (Allowances include restoring various facilities to pre-disaster conditions, human services, and administrative actions) listed in Appendix B. FEMA will document this determination in the project file and authorize the release of funding for the Undertaking without further review and SHPO notification.
- C. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of this Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, State of Mississippi agency, or contractor staff who meet the Secretary of the Interior's (SOI's) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in making *National Register* eligibility and affect determinations, and in overseeing compliance with this Agreement.
2. FEMA acknowledges that Tribes possess special expertise related to properties that possess Tribal religious and cultural significance, and FEMA may utilize this expertise in determining if any such properties are eligible for the *National Register*.

B. All time designations will be in calendar days. If any party does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the party's concurrence with FEMA's determination.

C. FEMA responsibilities:

1. FEMA may request that Federal, State of Mississippi agency, or applicant staff who meet the Qualifications, as determined by FEMA's FPO, conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR 800.4(b,c).¹
2. FEMA will review any *National Register* eligibility recommendations resulting from the performance of these delegated activities.
3. FEMA will provide the SHPO and Council with an annual report for the previous calendar year by March 31st of each year that this Agreement is in effect. This report will summarize, as listed below, the actions taken to implement the terms of this Agreement.
 - a. A listing of the projects requiring a cultural resource survey;
 - b. The number of properties added either as Mississippi Landmarks or to the *National Register*;
 - c. A summary of project mitigation measures undertaken, including the use of Memoranda of Agreements;
 - d. A summary of projects requiring archaeological activities;

¹ FEMA will provide 100 percent funding under the Stafford Act through standard procurement procedures for the performance of these delegated activities.

- e. A summary of staff training;
- f. The views of FEMA (Region IV) regarding the effectiveness of the Programmatic Agreement;
- g. Suggestions for additional actions that could be considered for inclusion in Appendix B.

The parties will review this information to determine if amendments to the Agreement are necessary. Upon the request of any party, a meeting will be held subsequent to the issuance of the annual report to review the report and/or discuss issues in greater detail.

- 4. FEMA shall ensure that all final reports resulting from Undertakings pursuant to this Agreement will be consistent with applicable SHPO guidelines for such documents.

D. SHPO responsibilities:

- 1. The SHPO will concur or non-concur with FEMA's *National Register* eligibility determinations within the timeframes required by this Agreement.
- 2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of representatives, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF A DISASTER

Following a Federal disaster declaration, FEMA will meet with the SHPO and MEMA to establish points of contact and protocols for the implementation of the Agreement. SHPO and MEMA representatives will then attend a historic scoping meeting, where FEMA and MEMA will provide guidance on program issues and processes. MEMA and FEMA, as appropriate, will also present information related to the Section 106 review process to all applicants, at the applicants' briefings and kickoff meetings.

A. FEMA will:

- 1. Determine with the SHPO those previously designated historic properties (standing structures) within the Undertaking's area of potential effect that may not have not retained integrity. This Agreement will only apply to historic properties that retain integrity in the aftermath of the Disaster, pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a *National Register* eligible property has retained integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.

2. Consult with other Federal agencies and any Tribes having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic preservation laws and regulations.
3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process, pursuant to 36 CFR 800.2(d).
4. Upon learning that a National Historic Landmark (NHL) has been damaged as a result of the disaster, FEMA will promptly notify the SHPO and the Secretary of the Interior's Program Manager at the National Park Service's Southeast Regional Office in Atlanta.

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
 - a. Properties listed in or previously determined eligible for the *National Register* through a Section 106 review or by the SOI;
 - b. Properties listed as Mississippi Landmarks;
 - c. Geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and
 - d. Previously identified Traditional Cultural Properties, and known properties of religious and cultural significance to Tribes.
2. Work with FEMA to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.
3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and to identify in coordination with FEMA specific activities that the SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying any Tribes, organizations, or individuals that may have an interest in historic properties affected by the disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties within the area of potential effect.
5. Assist local jurisdictions in identifying staging and landfill sites for debris disposal, and sites for chipping of vegetative debris, if applicable, that will have a minimal or no effect on historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and improved property are exempt from the provisions of Section 106 (36 CFR Part 800.12(d)).
- B. As a result or in anticipation of a disaster, FEMA may be requested to authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
 - 1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.
 - 2. The FCO will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, request an extension in writing from the SHPO. FEMA will immediately assume the SHPO's concurrence unless otherwise notified.
 - 3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. The SHPO will respond to any FEMA request for comments within 3 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 - 4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. STANDARD PROJECT REVIEW

The signatories of this agreement will follow the following review for all non-emergency undertakings, except as provided for in Stipulation II.B.

- A. Area of Potential Effects (APE): For all project review of standing structures the APE will be the individual facility (as defined in 44 CFR 206.201(c)) when an Undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR 800.4(b,c), FEMA will determine, in consultation with the SHPO, if the APE contains properties (including archaeological properties) that are listed in or eligible for the *National Register*.
- C. If no historic properties are present within the APE, or if an Undertaking is designed to avoid affecting the character defining features of such historic property or properties, FEMA will make a determination of "no historic properties affected" in accordance with 36 CFR 800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation. Unless the SHPO or any consulting party objects to this determination within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
- D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 14 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR 800.5(a)(1), or determine if the Undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards. FEMA will also consider any views provided by consulting parties and the public related to such effects.
 1. For standing structures only:
 - a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR 800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR 800.5(c). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding.
 - b. If the SHPO objects to the "no adverse effect" determination, FEMA will attempt to resolve the objection through discussion. If still unresolved,

FEMA will request through MEMA that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.

- c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

- a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.
- b. FEMA will initiate adverse effect consultation pursuant to Stipulation VII when consulting parties agree there is an adverse effect, or when a consulting party objects to a finding of "no adverse effect" whereby identified archaeological properties are avoided or effects minimized through redesign of an Undertaking, or through other procedures/requirements.

VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, and barring objections from Native American groups that have expressed an interest in the site because of its religious or cultural significance, and barring the existence of human remains or associated funerary objects within the site, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR 800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (for a category of projects). Following this decision, FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR 800.11(e).
1. Memorandum of Agreement: FEMA, in consultation with the SHPO and other affected consulting parties, may develop an MOA in accordance with 36 CFR 800.6(c) to outline measures to treat adverse effects to historic properties. FEMA may consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other

affected consulting parties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.

2. Secondary Programmatic Agreement: FEMA, the SHPO, MEMA, the Council, if participating, and other consulting parties may consult to develop a Secondary Programmatic Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by an applicant.
- B. When an Undertaking will adversely affect an archaeological property, and barring objections from Native American groups that have expressed an interest in the site because of its religious or cultural significance, and barring the existence of human remains or associated funerary objects within the site, FEMA may resolve the adverse effect. Resolution may be accomplished by providing for the recovery of significant information through archaeological data recovery or other scientific means, assuming avoidance and adverse affect minimization provisions in Stipulation VI have been exhausted. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation*, as well as the SHPO's data recovery/documentation guidelines; and consult with the other consulting parties to prepare a data recovery plan, including material and record curation provisions. For sites where FEMA determines extraordinary circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.
- C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR 800.6(a)(4).
- D. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA also will notify and invite the Secretary of the Interior (Secretary), through the NHL Program Manager at the National Park Service's Southeast Regional Office in Atlanta, to participate in consultation, pursuant to 36 CFR 800.10(c). When the Council participates in consultation related to an NHL, the Council will report the outcome of the consultation to the Secretary and the FEMA Director.

VIII. CHANGES TO AN APPROVED SCOPE OF WORK

MEMA will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

IX. UNEXPECTED DISCOVERIES

- A. MEMA will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, including human remains; or affect a known historic property in an unanticipated manner. MEMA will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO and other affected consulting parties.
- B. FEMA will notify the SHPO and other affected consulting parties of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO and other affected consulting parties of any time constraints, and all parties will mutually agree upon timeframes for this consultation. MEMA and the applicant may participate in this consultation. FEMA will provide the SHPO and other affected consulting parties with written recommendations to take into account the effects of the Undertaking.
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.

X. DISPUTE RESOLUTION

- A. Should the SHPO, MEMA, or a consulting party object within the timeframe provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward to the Council all documentation relevant to the dispute, including FEMA's proposed resolution to the objection.
- B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.

XI. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consulting with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VII.

- B. FEMA will specifically advise MEMA of this Stipulation and will require that MEMA advise its applicants in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. MEMA will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XII. DURATION, AMENDMENTS, AND TERMINATION

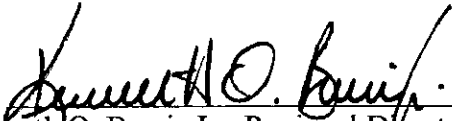
- A. Unless terminated pursuant to Stipulation XII.C., below, this Agreement shall remain in effect from the date of execution for five years; until FEMA, in consultation with all other signatories, determines that the terms of this Agreement have been satisfactorily fulfilled and/or the Agreement should be extended.
- B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, the signatories will consult to seek amendment of the Agreement.
- C. FEMA, the SHPO, or MEMA may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.
- D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR 800.14(a).

XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT


- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.
- B. FEMA programs authorized by Congress in the future may be included under this Agreement, without amending this Agreement, through written concurrence by FEMA, SHPO, MEMA, and any other consulting parties.
- C. Execution of this Agreement by all signatory parties and implementation by FEMA evidences that FEMA has taken into account the effects of Undertakings on historic properties and afforded the Council a reasonable opportunity to comment on all of the Programs pursuant to the Stafford Act, the National Flood Insurance Reform Act, and Disaster Mitigation Act; and that FEMA has satisfied its Section 106 responsibilities for all Undertakings.

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE, AND
THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY**

**FEDERAL EMERGENCY MANAGEMENT AGENCY
EMERGENCY PREPAREDNESS AND RESPONSE DIRECTORATE**

By: 
Kenneth O. Burris Jr., Regional Director
Region IV

Date: 1/5/04

By: 
William R. Straw, Ph.D., Regional Environmental Officer
Region IV

Date: 01/05/04

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE, AND
THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY**


MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE

By: Elbert R. Hilliard
Elbert R. Hilliard, State Historic Preservation Officer

Date: 10-13-2003

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE, AND
THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY**

MISSISSIPPI EMERGENCY MANAGEMENT AGENCY

By:  _____
Robert Latham, Director

Date: 11/4/03

APPENDIX A

ADDENDUM TO THE PROGRAMMATIC AGREEMENT AMONG THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE MISSISSIPPI STATE HISTORIC PRESERVATION OFFICE, AND THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Federal Emergency Management Agency (FEMA), which has been incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, makes assistance available to States, communities, and other eligible entities for disaster housing; hazard mitigation; prevention of, and preparedness for, emergencies and disasters; and the repair, restoration and replacement of public infrastructure pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206, (Stafford Act), the National Flood insurance Act of 1968, as amended, 42 U.S.C. § 4001 et seq., the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2201 et seq., and implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR); and

WHEREAS, FEMA, the Mississippi State Historic Preservation Office (SHPO), and the Mississippi State Emergency Management Agency (MEMA) recognize that implementation of these Programs will result in Undertakings that may occur on lands under the jurisdiction of the _____ Indian Tribe (Tribe); and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on properties of religious and cultural significance to the Tribe, located on or off Tribal lands, that are listed in or eligible for the *National Register of Historic Places* (historic properties), and has consulted with the Tribe and its Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR 800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA);

NOW, THEREFORE, FEMA has consulted with the Tribe and requested that it enter into this Addendum to the Programmatic Agreement (Agreement) to facilitate the Section 106 review of Undertakings that may directly or indirectly affect historic properties of religious and cultural significance on or off Tribal lands.

STIPULATIONS

FEMA shall require that the following measures be implemented:[OPTION 1: The THPO has not assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA will consult with the _____ THPO in addition to the SHPO, pursuant to this Agreement, for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate

in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will also refer to the THPO for the review of these Undertakings.

2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO in addition to the SHPO pursuant to the Agreement and this Addendum.
3. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, MEMA (if the Grantee), and any other participating Federal agency.

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA recognizes that the _____ Tribe has assumed the responsibilities of the SHPO for Section 106 on Tribal lands, pursuant to Section 101(d)(2) of the NHPA, and shall consult with the THPO in lieu of the SHPO, pursuant to this Agreement for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will refer only to the THPO for the review of such Undertakings occurring on or affecting historic properties on Tribal lands. All references to the SHPO will refer to both the SHPO and the THPO for the review of such Undertakings that may affect historic properties off Tribal lands, unless the SHPO elects to not participate in this review.
2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO pursuant to the Agreement and this Addendum.
3. The parties recognize that the SHPO shall participate as a consulting party pursuant to the Agreement if an Undertaking will occur on Tribal land but affect historic properties off Tribal land. The SHPO may also participate in consultation if requested in accordance with 36 CFR 800.3(c)(1).
4. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, MEMA (if the Grantee), and any other participating Federal agency.

SIGNATORY PARTIES:

FEMA, the SHPO, the THPO, MEMA (if the Grantee), and any other participating Federal agency

_____ **TRIBAL HISTORIC PRESERVATION OFFICE**

By: _____
[name], Tribal Historic Preservation Officer

Date: _____

APPENDIX B: PROGRAMMATIC ALLOWANCES

The following project activities do not require review by the SHPO or Council pursuant to Stipulations III.-VI. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

When referenced in an Allowance, “in kind” shall mean that the result will match all physical and visual aspects of existing historic materials, including form, color, and workmanship. “In kind” mortar will also match the strength and joint tooling of existing historic mortar.

- I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when all work is performed in previously disturbed or archaeologically surveyed areas and is consistent with the Standards, or any other applicable SOI Standards
 - A. Ground disturbing activities related to the repair, replacement, or hardening of any footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks), provided the excavation will not disturb more soil than previously disturbed. This Allowance refers to archaeological review. The Allowance also applies to historic review of such features that are listed in or eligible for the *National Register*, only if the work is in kind.
 - B. Substantially in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any modest increase in capacity, provided the excavation will not disturb more soil than previously disturbed. This Allowance also applies to related features (such as headwalls and wing walls) that are in or eligible for the *National Register*, only if the work is in kind.
 - C. Repair, replacement, or hardening of utilities under existing improved roads/roadways, or within other previously disturbed rights of way.
 - D. In kind repair or replacement of driveways, parking lots, and walkways.
 - E. In kind repair or replacement of fencing and other freestanding exterior walls.
 - F. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including major exposed pipelines. Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
 - G. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts.

- H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
- I. In kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
- J. In kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boat ramps, boardwalks, stands, gazebos, and dune crossovers, provided the footprint will substantially match the existing footprint.
- K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of debris staging areas.
- L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site.
- M. Dewatering flooded developed areas.
- N. Placement of emergency beach berms seaward of improved property where severe erosion has occurred, when work is performed under the authority of an existing US Army Corps of Engineers and or Mississippi Department of Environmental Quality permit for both the sand deposit area and upland or offshore borrow site, including dredge spoil piles.

II. BUILDINGS, when all work is consistent with the Secretary of Interior's Standards

A. Interior Floors, Walls, Stairs and Ceilings

- 1. In kind repairing, replacing, retaining, preserving, protecting, or maintaining of materials or features.
- 2. In kind repair of interior floors, walls and ceilings. This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
- 3. Repair or replacement of suspended or glued ceiling tiles.
- 4. Installation of grab bars and other such minor interior modifications for handicapped accessibility.

5. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in kind replacement, with the exception of historic fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.
2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, etc.

C. Windows and Doors

1. In kind repair or replacement of damaged or deteriorated windows and doors.
2. Replacement of windowpanes in kind or with clear double or triple glazing, provided the result does not alter the existing window material and form. Also, historic windows or glazing may be treated with clear window films. This Allowance does not apply to the replacement of existing archaic or decorative glass.
3. In kind repair of historic door and window hardware.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning.
2. In kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim.
3. Substantially in kind repair or replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems, and disturbed historic fabric is restored in kind.

6. In kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.

E. Roofing

In kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Also, cement asbestos shingles may be replaced with asphalt-based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.
2. In kind replacement or installation of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.

G. Seismic Upgrades

The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

III. ROADS AND ROADWAYS

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and

compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. This Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.

- C. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- D. In kind repair of road lighting systems, such as period lighting.
- E. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.
- F. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.

IV. FEES AND SERVICES

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the *Register*.
- E. Reimbursement of an applicant's insurance deductible, not to exceed \$1,000.

V. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 411, 412, 415, and 416 of the Stafford Act:

- A. Implementation of Federal assistance to individuals and households pursuant to Sections 408 and 411 of the Stafford Act, Individual and Households Programs, including limited funding for minor home repairs/cleaning content replacement, transportation, health care expenses, with the exception of construction and ground disturbing activities associated with temporary housing.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites.
- C. Disaster unemployment assistance.
- D. Legal services.

- E. Crisis counseling.
- F. Loans to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- G. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

VI. VECTOR CONTROL

Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

VII. ACQUISITIONS

Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition.